

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SERGIO ABRAHAM VALADEZ (07),

Defendant.

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Criminal Action No. 4:17-cr-181-O

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is Defendant's Motion for the Return of Property filed pursuant to Rule 41(g), Federal Rules of Criminal Procedure. ECF No. 401. The United States Magistrate Judge entered his Findings, Conclusions, and Recommendation in which he recommends that the motion be denied. *See* ECF No. 405. Although Valadez filed correspondence to the Court presenting essentially the same claims set forth in his motion, he did not file objections to the Magistrate Judge's Recommendation. *See* ECF No. 406. The District Court reviewed the Findings, Conclusions, and Recommendation for plain error. Finding no error, I am of the opinion that the findings of fact, conclusions of law, and reasons for denial set forth in the Magistrate Judge's Recommendation are correct.

Rule 41(g) of the Federal Rules of Criminal Procedure provides that a person "aggrieved by an unlawful search and seizure of property or by the deprivation of property" may file a motion for return of the property. When the underlying criminal action has already concluded, as here, a motion under Rule 41(g) is properly construed as a civil action for the return of property under the Court's general equity jurisdiction pursuant to 28 U.S.C. § 1331. *See Bailey v. United States*, 508 F.3d 736, 738 (5th Cir. 2007) (citing *Taylor v. United States*, 483 F.3d 385, 387 (5th Cir. 2007));

Clymore v. United States, 217 F.3d 370, 373 (5th Cir. 2000). Accordingly, Defendant's Motion for Return of Property, liberally construed as a civil action filed under 28 U.S.C. § 1331, should be opened as a new civil case.

For statistical purposes, the **Clerk of Court** is directed to open and immediately close a new civil action against the United States under 28 U.S.C. § 1331 (Nature of Suit Code 540), with direct assignment to Judge O'Connor and Magistrate Judge Ray.

The **Clerk of Court** shall file Defendant's motion (ECF No. 401) as a civil complaint in the new civil case along with a copy of the Government's response (ECF No. 404), the Magistrate Judge's Recommendation (ECF No. 405), and a copy of this order.

For the reasons stated in the United States Magistrate Judge's Findings, Conclusions, and Recommendation (ECF No. 405), which are hereby adopted and incorporated by reference as the Findings of the Court, the Motion for Return of Property (ECF No. 401) is **DENIED**.

SO ORDERED this **1st day of December, 2020**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE